Pesticide Regulation in British Columbia

Public Report No. 11

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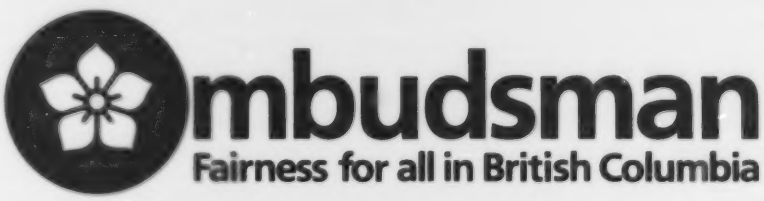

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PUBLIC REPORT NO. 11

MARCH, 1988

OMBUDSMAN OF BRITISH COLUMBIA

Legislative Assembly
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OVERVIEW

The Environmental Appeal Board in British Columbia has, among other duties, responsibility for hearing appeals against the issuance of permits under the Pesticide Control Act for pesticide use on publicly owned land. The major regulated users of pesticides are the Ministry of Forests and Lands, forestry companies, railways, public utilities, Municipalities and Regional Districts. The Ombudsman's Office has received many complaints from interested members of the public concerning the lack of opportunity to participate effectively in the decision-making process for determining the safe use of such substances. Their frustration and concern has led to court challenges, adverse publicity, civil disobedience and widespread mistrust of government pesticide use decisions. These interfere with natural resource planning and management by government and industry. No one is well served by the current situation.

This systems study makes recommendations for the timely and meaningful participation by all interested parties in such decisions. The process has involved consultation with the Ministers and government officials responsible for the Environmental Appeal Board, Pesticide Control Program and the Ministries of Agriculture and Fisheries, Forests and Lands, Health, and Environment and Parks. This constructive interaction has ensured that the recommendations are realistic and supported by the public officials responsible for their implementation and administration.

The recommendations address the issues of timely public notice and consultation, public access to accurate information, comprehensive analysis of alternative measures,and procedural fairness in the appeal process. Together these should reconcile the legitimate interests of users of these substances with the need for protection against unreasonable adverse effects through a process which is both fair and effective.

Stephen Owen
Ombudsman

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PESTICIDE REGULATION: THE PERMIT AND APPEAL SYSTEM IN BRITISH COLUMBIA

1. BACKGROUND

A. Introduction

> "Pesticides bring us untold benefits, but they can also get us into trouble if they are not handled properly. Careless use of pesticides can lead to food contamination, damage to crops, as well as human and animal injury...Government control of the manufacture and use of these potentially dangerous substances is necessary if we are to protect people from the misuse of pesticides...The increased use of pesticides and associated products, and a greater concern over their potential for harm as well as good necessitate a broader authority for regulation than in the past."[1]

Pesticides* are widely used across Canada for agricultural and forestry purposes, for railway, hydro and highway rights-of-way, by regional districts for insect and weed control and in homes and gardens. Federal, provincial and municipal governments all regulate the use of pesticides precisely because pesticides can be dangerous if improperly used.

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* For the purpose of this study the word pesticide means an organism or material that is used to prevent, destroy, repel or mitigate a pest and includes insecticides, herbicides, rodenticides and fungicides.

In British Columbia the Ministry of Environment and Parks has primary responsibility for managing and protecting the land, water, air and living resources of the Province. As part of those duties it administers and enforces legislation that controls the use of pesticides, through the Pesticide Control Program. The Pesticide Control Program is expected to make sound decisions about pesticide use - decisions that serve broad public policy interests as well as individual needs. Often those interests may appear to conflict. For example, the Ministry of Transportation and Highways may apply to use a pesticide to clear weeds from roadsides and signs in order to improve visibility and driver safety while residents may have concerns that their gardens, water intakes or a fish-bearing stream that parallel the road may be affected by the pesticide.

It is necessary for government to develop procedures that identify and attempt to balance these competing interests in environmental management. This study examines the present process for regulation of pesticide use by the provincial government. It provides a review of the pesticide use permit system administered under the Pesticide Control Act and of the provision for appeals to the Environmental Appeal Board.

B. Jurisdiction

Section 10(1) of the Ombudsman Act, authorizes investigation by the Ombudsman on his own initiative of any procedure used by an authority which may aggrieve a person. Further, section 30(2) provides that he can comment publicly on matters considered to be in the public interest. The Ombudsman's power to investigate extends to all provincial Ministries and includes any board of which the majority of the members are appointed by an Act, Minister or the Lieutenant Governor in Council. Section 22 of the Act sets out a statutory code of conduct against which administrative acts, procedures and decisions can be measured. The basic requirement of this code is that government be fair in its dealings with individuals. All provincial authorities who make environmental decisions of an administrative nature mentioned in this study come within the Ombudsman's jurisdiction. This jurisdiction includes the merits of such decisions, and not merely the procedures followed in reaching them.

C. Scope of Study

Since the Ombudsman's Office monitors public concern over the full range of provincial government administrative

activity, it is in a useful position to deal with cross-Ministry issues like pesticide control. The role of the Ombudsman's Office is not to oppose government decision making or to advocate on behalf of certain interests, therefore this report does not take a "pro" or 'anti' pesticide use stand. The mandate is to ensure that the manner in which the public service applies policy to individual situations is fair; that the methods by which decisions are made are neither arbitrary nor non-reviewable.

This study was commenced on the Ombudsman's initiative as a result of complaints received concerning pesticide regulation in B.C. Most of the concerns had a common basis: problems with the decision-making processes of the environmental agencies controlling pesticide use, from the Pesticide Control Program to the Environmental Appeal Board. The Ombudsman's Office has a responsibility to identify and recommend remedies for systemic causes of recurring complaints. Once the problem was identified, the Office focused its expertise in administrative fairness on the specialized work of the governmental authorities making these environmental decisions.

While maintaining a neutral and independent stance from any government agency, the Ombudsman's function is not to be an isolated critic. Consultation has taken place with the people from the various Ministries who are engaged in this process: Health, Environment and Parks, Agriculture and Fisheries, and Forests and Lands. By combining the Ministries' environmental experience with this office's expertise in fair process, the most effective results can be produced. Involving the Ministries ensures that the study is both relevant and compatible with their broad policy objectives to serve the public's interests. The views and recommendations of this public report are being made at a timely stage as the government is currently reviewing its environmental policy.

D. Pesticide Control: Legislation and Procedures

It may be helpful to have a brief overview of the complex levels of government involvement in regulating pesticides.

(a) Federal

In general, prior to any pesticide being sold or publicly available in Canada, it must be registered under the Federal Pest Control Products Act. As part of this

registration process, the pesticide is classified according to its hazardous nature and is labelled for its appropriate uses.

Estimates of the time and money that a manufacturer may invest in developing a chemical compound to the stage where it is registered as a pesticide for use in Canada are approximately 10-12 years and close to $25 million.[2]

To support registration of a pesticide the manufacturer must submit scientific data which is reviewed by four federal departments; Health and Welfare Canada, Fisheries and Oceans, Environment Canada and Agriculture Canada. Each department looks at and comments on the data from its particular point of view. Health and Welfare Canada examines the human health and safety aspects of residues in food, occupational and bystander exposure to the product. It evaluates immediate and long term effects on human health by considering the results of extensive animal testing. Pesticide impact on land, air, water, fish and wildlife species is assessed by Environment Canada. Agriculture Canada reviews the effectiveness of the pesticide's intended uses on crops or food products.

All recommendations about whether the pesticide should be registered are made to Agriculture Canada, as the final decision rests with the Minister of Agriculture.

The test set out for registration is found in the regulations to the Pest Control Products Act. The Minister of Agriculture must be satisfied that the use of the pest control product will not "lead to an unacceptable risk of harm to public health, plants, animals or the environment."[3]

The federal registration process is dependent on health and safety studies that are supplied by the manufacturers who have a vested interest in having their compounds registered. In 1977, Industrial Bio-Test Laboratories Inc., (IBT), of Illinois, U.S.A. was discovered to have fraudulently or improperly conducted safety studies which were used to support the registration of approximately 113 pesticides in Canada. The majority of these pesticide manufacturers have now submitted replacement safety studies to Health and Welfare Canada. Pesticides registered on the basis of IBT data were not removed from use pending new studies because the federal policy was

that as long as there was no conclusive evidence of hazards to health and safety, "precipitous decisions...could lead to significant effects on the availability and cost of food as well as sharply disrupting the agricultural sector".[4] Since the IBT scandal there have been international standards set for good laboratory practise in order to avoid a repetition of that event. Agriculture Canada also requires manufacturers to submit the raw laboratory data as part of the evaluation procedure for registration.

In May, 1986, Agriculture Canada announced that 452 active ingredients of pesticides registered before 1985 would be re-evaluated. It stated that this process would help decide whether those products could continue to be used safely and effectively. "Pesticide registrations date from 1926, but data requirements have changed significantly and, within the last ten years, very rapidly. As a result, most products registered before 1970 are poorly supported by modern standards, except in instances where new data conforming to present requirements have been submitted."[5]

The registration procedure under the Pesticide Control Products Act is not open to public scrutiny. There is no process for the public to find out the scientific data which supports registration. Such data is generally considered protected by trade secret laws that protect manufacturers. There is no provision for any public review by way of appeal of a decision to register. Agriculture Canada has indicated that it is committed to the development of a public consultation process and has implemented some steps in that direction.

As one response to increasing pressure to involve and inform the public, Agriculture Canada established a toll free national pesticide hotline (1-800-267-6315). It provides information about the registration process, label information, safety precautions and other issues about pesticide use.

Two reports released in 1987 have made further recommendations for change. The parliamentary Standing Committee on Justice and Solicitor General published "Open and Shut: Enhancing the Right to Know and the Right to Privacy". It suggests amendments to the Access to

Information Act so that the federal government would be required to disclose the results of any product or environmental testing it carries out. Another recommendation is that trade secrets of chemical manufacturers be disclosed if a public health, safety or environmental protection interest overrode the commercial damage from disclosure. This suggestion has been accepted and legislative change is anticipated to the federal Access to Information Act.

The Law Reform Commission of Canada published a comprehensive study paper, "Pesticides in Canada: An Examination of Federal Law and Policy". It concludes that the federal registration program has some serious deficiencies including inadequate health and safety testing requirements, dubious assumptions about acceptable risks associated with pesticide exposure, and the inability of the public to exercise any kind of comment or review role. It recommends law reform that will improve government authority to regulate as well as to allow greater public access to the regulatory processes with respect to pesticides.

(b) Provincial

Constitutionally, provinces share some jurisdiction over pesticides with the federal government. The distinction generally made is that the federal government provides for the registration, classification and labelling of pesticides before they can be available for use in Canada. Provincial governments control their actual use through regulating their sale, transportation, application, storage, disposal and by enforcing these standards.

In British Columbia the Pesticide Control Act and regulations provide two methods of controlling the use of pesticides; a permit system that allows a pesticide to be used and a license and certificate system that regulates the sales and applications of pesticides to people who have received specific pesticide information training.

The Act prohibits the application of a pesticide to any body of water or area of land without a permit. However, the greatest use of pesticides in British Columbia is unregulated because most pesticide use on private land is

exempted from requiring a permit under the regulations to the Pesticide Control Act. Agricultural uses on privately owned land account for approximately 75% of the pesticide use in the province. With one exception, there is no right of any public review of pesticide use on private land at this time. The Ombudsman's Office understands that the Ministry of Environment and Parks is concerned about the effects of uncontrolled pesticide use and is developing plans to regulate agricultural pesticide use on private land.

At present, the permit system regulates pesticide use on public land, i.e. Crown land, land controlled by schools, universities, hospitals and by municipalities and regional districts. Permits are required to apply pesticides to all natural bodies of water, and to private land that is used for forestry, transportation or by public utilities. The greatest number of permits for pesticide use are issued to the Ministry of Forests and Lands and forestry companies, railways, utility companies and regional governments. A list of the purposes of the permits that have been granted from 1985 to 1987 is attached as Appendix 1 to this study.

The Administrator of the Act can only grant a permit once he is satisfied that the pesticide application will not cause an "unreasonable adverse effect". An adverse effect is interpreted as one that results in damage to man or the environment. Most pesticides are deliberately applied to land or water with the intention of causing an adverse effect to selected targets - weeds, mosquitoes, coarse fish or alder trees, as examples. The Administrator has the responsibility under the Act to determine what an "unreasonable" adverse effect is, in any given circumstance.

The Act establishes a Pesticide Control Committee which must review applications for pesticide use permits as referred by the Administrator. The members of the Committee are appointed by the Minister of Environment and Parks. They are all public employees, each representing a different Ministry's mandate: Agriculture and Fisheries, Health, Forests and Lands, Environment and Parks. A federal representative of Environment Canada forms part of the Committee as well. The Pesticide Control Committee members each comment on all pesticide use permit applications and often suggest conditions that should be

attached to any pesticide use. The Administrator takes these comments into account prior to granting or refusing a permit.

There are two other kinds of permits which the Administrator can grant which may not be reviewed by the Pesticide Control Committee. Special Use permits may be given for research purposes for unregistered pesticides and Restricted Use permits are required for particular pesticides that require special training to use because they are extremely toxic or persistent. Once a Restricted Use permit has been granted, a pesticide use permit is required in order to use the pesticide on public land.

Section 15 of the Pesticide Control Act provides that any person can appeal any decision of the Administrator to the Environmental Appeal Board.

The Environmental Appeal Board is a quasi-judicial tribunal, developed in response to a need to have a decision-making body that was independent from the Minister of Environment and Parks and his staff. It is meant to hear environmentally specialized cases in a

timely, accessible and inexpensive manner that is not available through the court system. It was established by the Environment Management Act and hears appeals of decisions made under four different environmental acts: the Pesticide Control Act, Water Act, Wildlife Act and the Waste Management Act.

The members of the Board are appointed by Cabinet. Currently there are 23 men and women who serve as members. The Board generally holds hearings in panels of 1, 3 or 5 members.

The focus of pesticide use permit appeals is whether or not the Administrator erred in making a decision to grant or refuse a permit. The majority of appeals are brought by concerned members of the public who wish to have the granting of a pesticide use permit reversed or its terms varied. The Board hearings include the right to be represented by counsel, receive sworn evidence, file documents as exhibits, call expert witnesses and cross examine. The proceedings are recorded. The decisions of the Board are given in writing to the parties to an appeal, with copies given to the Administrator and to the Minister of Environment and Parks.

There is no statutory right of appeal from the Board's decisions. Section 12 of the Environment Management Act states that the Lieutenant Governor in Council, (i.e Provincial Cabinet) may vary or rescind a decision of the Board where it is in the public interest to do so.

By breaking down the number of appeals heard by Act, these figures provided by the Environmental Appeal Board demonstrate the variety of its work.

Pesticide Control Act	1984	1985	1986
Number of Appeals	14	31	60
Appeals Upheld	2	5	4
Appeals Denied	10	25	40
Appeals Abandoned	2	1	5
Appeals Rejected	0	0	6
Appeals on Cancelled Permits	0	0	5

Water Act	1984	1985	1986
Number of Appeals	5	12	19
Appeals Upheld	1	1	1
Appeals Denied	2	11	7
Appeals Rejected	1	0	11
Appeal Adjourned	1	0	0

Waste Management Act	1984	1985	1986
Number of Appeals	6	11	11
Appeals Upheld	1	0	7
Appeals Denied	3	11	1
Appeals Abandoned	1	0	3
Appeal Pending	1	0	0

Wildlife Act	1984	1985	1986
Number of Appeals	8	7	7
Appeals Upheld	2	5	3
Appeals Denied	4	2	2
Appeals Abandoned	1	0	2
Appeal Pending	1	0	0

As may be seen, the greatest proportion of the appeals are from decisions of the Administrator under the Pesticide Control Act.

E. Complaints

The majority of environmental complaints to the Ombudsman, as well as the majority of appeals to the Environmental Appeal Board concern decisions on the use and control of pesticides on public land in British Columbia. It is necessary to keep in mind that of the more than 700 pesticide use permits applied for and granted in British Columbia in 1986, only 60 were appealed. This statistic is open to several interpretations, all of which may have some basis in fact:

(a) that the public service is generally doing a good job ensuring that pesticides are used safely and reflects public confidence in that process, or

(b) that the public is not aware of the number and extent of pesticide use permits due to a flawed notification procedure; or,
(c) that some of the public is being selective in reviewing certain pesticide use permit decisions according to geographical location, pesticide used or perception of available alternative methods, or
(d) that some of the public is disillusioned with the integrity and effectiveness of the appeal process.

It is important to note that the individuals who appeal the granting of pesticide use permits, and who complain to the Ombudsman include members of public interest groups, unions, medical associations, Indian bands, ratepayer associations, municipal and regional district elected officials - in all representing thousands of British Columbians who are concerned about the adverse effects of pesticide use.

The following complaints are representative of the range and variety of public pesticide concerns received by the Ombudsman's Office. They also demonstrate the dilemmas faced by provincial authorities attempting to reconcile public policy interests with conflicting goals.

1. An elected official from Nelson was concerned about the cumulative effects of the 14 pesticide use

permits granted in the Kootenay region for purposes ranging from roadside visibility clearing, hydro line and dam maintenance, to keeping railway tracks weed free. He was worried that each permit had been considered in isolation and that the combined effects could be a risk that had not been evaluated.

2. A resident of the Okanagan wanted the Ministry of Forests and Lands to use manual brush clearing methods instead of spraying pesticides as the long-term risks of using pesticides are still being discovered. He was frustrated that the Environmental Appeal Board would not consider evidence of alternative methods.

3. A woman living in the Queen Charlotte Islands was concerned about the build-up effects of years of pesticide use in an island environment.

4. A Powell River resident complained that the public should be notified at the time of an application for a pesticide use permit rather than after the permit had been granted.

5. A biologist living in Argenta, who was complaining about an appeal hearing, wrote: "As for their comment that there is always a risk in carrying out any human activity, the Environmental Appeal Board seems to have forgotten what is being appealed is the government's right to do something to us that we do not want them to do; whereas in most risky human activities we have a choice."

6. A man who lives in the Interior had called the Pesticide Control Program and asked if he could have copies of the comments of the Pesticide Control Committee which had reviewed a permit application. He was told he could come to Victoria to look at the file but copies would not be mailed to him.

7. An observer at an Environmental Appeal Board hearing held in northern British Columbia was upset to see one of the members of the Board studying his airline schedule while evidence was being given. He had the impression that the Board member was not listening to the witness.

8. A woman wrote from New Denver that she believed that a pesticide permit had not been properly enforced. A railway track had been sprayed with pesticide at night when streams and wells, which should have been avoided, could not have been visible.

9. A writer from Denman Island could not find any written criteria which the Administrator of the Pesticide Control Program took into consideration when deciding whether a pesticide will not cause "an unreasonable adverse effect".

10. A person living in Castlegar explained that his municipal government had a policy whereby city lands were no longer sprayed with pesticide. He wanted to know if provincial government pesticide control officials had considered that policy before permits affecting his town were granted.

2. PESTICIDE USE PERMITS: APPLICATIONS

A. Application Process: Pesticide Control Program

No pesticide can be used on public land, on private land that is used for forestry, transportation or public utility right-of-way purposes, or in any naturally occurring waterbody in British Columbia without a permit. There were 781 applications for pesticide use permits in 1985, a 40% increase over 1984. There was a slight drop in 1986, reflecting primarily a reduction in the number of applications for forestry purposes. By mid-1987 approximately 650 applications had been made. The process for a permit application is a simple four-step procedure. It is meant to be an expert evaluation of whether the intended use of a particular pesticide in a specific location will cause an unreasonable, adverse effect on people or on the environment. It is expeditious and takes approximately 6-8 weeks from the time the application is made to the Pesticide Control Program to the Administrator's decision. The steps are as follows:

1. An application for a pesticide use permit is made by submitting seven copies of a prescribed application

form, each accompanied by a map of the area of proposed pesticide use to the Pesticide Control Program. Applications require basic facts about the location, time period and purpose for which the pesticide is intended, the commercial and chemical names of the pesticide, proof of its federal registration, the method of application, proximity to water bodies, and total quantity of pesticide to be used. The name of the pesticide applicator and proof of that applicator's certificate of training in pesticide use, is also requested, although not always supplied.

There is no provision on the application form to indicate whether the applicant has examined any alternative method of pest control.

The quality of applications vary. Most are just the form supplied by the Pesticide Control Program. A few are backed up by technical reports showing lengthy research into other options tried and safety precautions that will be taken to ensure that the pesticide only affects its target.

2. The Pesticide Control Program sends a copy of the application and map to each of the representatives of the Pesticide Control Committee. The appropriate regional manager of the Ministry of Environment and Parks is also sent a copy of any application affecting his region. The review system presumes each member will apply his own expertise to ensure no unreasonable adverse effect will occur with a pesticide's use. The mandate and technical knowledge of each member varies according to the Ministry that person represents, ranging from crop, bee and livestock safety, protecting fish, wildlife and their habitats to safeguarding drinking water supplies.

3. Each member of the Pesticide Control Committee examines an application and makes a written comment or recommendation about it. Most applications are treated as routine - the applicant is known to be experienced and reliable, the proposed pesticide use is well within label restrictions, the pesticide's effects are predictable and the site for proposed use is well documented. These routine applications receive an application form inspection and a general recommendation to avoid contaminating waterways and direct human exposure.

Non-routine permit applications merit special attention - for instance, if the map gives inadequate information for the size of the area, if the proposed pesticide application is by aerial methods which are not target specific, if the permit applicant or the actual pesticide applicator have been unreliable or if the use of pesticides has been publicly controversial in that region. In that case a committee member may call a field staff person like the district agriculturalist or a regional habitat biologist, to get more site specific details. Additional information may be requested from the applicant or a visit to the site may be made. This does not occur with the majority of the permit applications. There is no standard method of distinguishing between routine and non-routine permit applications that is common to all Committee members.

In fact, although the Committee members are universally under a very large workload, trying to meet short permit decision deadlines, there is a wide variance in the amount of time spent by individual Committee members evaluating the permits. Representatives of the Ministry of Environment and

Parks, Fish and Wildlife Branch and of Environment Canada do a great deal of local consultation as less than half of their permit applications are treated as routine. They make the majority of on-site visits. They also share and make most of the comments which suggest restricting the use of the pesticide. The recently retired Health representative had been expected to fill a demanding position within his own Ministry which did not leave much time for reviewing hundreds of permits. Recently, public health inspectors suggested that the new Health representative on the Committee involve them at the community level so that information could be provided about local conditions such as drinking water sources. The Health Ministry has acknowledged that local Health Units could be helpful in providing site specific information if copies of the applications were referred to them.

Some Committee members ask the applicant if alternative methods of pest control other than pesticides have been considered, some do not. Some Committee members have asked for more time to comment

on particular applications and permits have been issued without the comments of those members. There have been cases where at least one representative was strongly opposed to an application being granted, but the permit was issued. There is no shared written criteria or guideline defining what constitutes an unreasonable adverse effect in particular cirumstances.

The Committee members meet as a group once or twice a year. Their reviews of applications are carried on individually, and in most cases, comments are made without knowledge of other members' comments or recommendations. The comments are returned to the Pesticide Control Program headquarters.

The Committee does not review restricted use permits which are issued by the Administrator for extremely toxic or persistent pesticides and require specialized training to handle, unless the pesticide is going to be used on public land. It may not review special use permits granted for research use

into unregistered pesticides if the area of land is less than .5 hectares.

4. After reviewing all the Committee's comments, the Adminstrator makes a decision to grant or refuse the application. A permit will only be issued if he is satisfied that no unreasonable adverse effect will be caused by the pesticide use in the particular area.

Many permits are issued with conditions attached that reflect the Committee's comments. For example, a different method of pesticide application may be required, certain areas may have to be marked and excluded as pesticide free zones, or particular weather conditions may be required before the permit can be used.

All permits are issued with the requirement that the public must be notified before the permit becomes valid to use. Regulations to the Pesticide Control Act provide that this can be done in a number of ways including posting a copy of the permit in a conspicuous place where the pesticide is to be used,

publishing in a paper with local distribution, or providing a copy to any person whose rights may be affected by the use of the pesticide authorized in the permit.

There is an increasing use of multi-year permits. The terms of those permits still only provide for the public to be notified of the pesticide use permit once, although the pesticide use may actually span a period of several years in the same area for the same purpose.

Although the permit applicant is given written notice of a right to appeal, the public notification of a permit does not include any information that any person may appeal a decision of the Administrator to the Environmental Appeal Board within 30 days.

B. Issues and Recommendations

Fair public administration is not simply the application of goodwill or correct technical expertise to particular situations; it requires a baseline of clear and consistent

policy and practices to ensure that similar situations are treated consistently and different situations are treated individually. It also requires that decisions be reasonable and be made after a full consideration of all relevant information.

The recommendations that follow are basic to ensuring procedural fairness and administrative effectiveness in the regulation of pesticide use by permit in British Columbia.

1. Written Criteria

The Legislature has delegated authority to the Administrator through the Pesticide Control Act and regulations to grant, amend, revoke or refuse pesticide use permits. Permits can only be granted if he is satisfied that the pesticide use will not cause an unreasonable adverse effect on people or the environment. The Act empowers him to define an unreasonable adverse effect for particular circumstances. Since the Act does not state any standards which should be taken into account in the exercise of that discretion, it is incumbent on the

Administrator to do so. These criteria, drawn up in consultation with the Pesticide Control Committee should act as general guidelines by which permit applications can be judged.

Written criteria would also help set a minimum standard of evaluation for each pesticide use application. It is reasonable that different levels of scrutiny apply to permits that are considered routine than for those that are non-routine due to extraordinary circumstances. It is not reasonable that assessment of pesticide use permits should vary widely among Pesticide Control Committee members due to different standards of care used in evaluation.

These written standards or criteria should be available to the public. This will provide all interested parties with a guide to the information that the Administrator and the Pesticide Control Committee consider in evaluating whether or not a pesticide use will cause an unreasonable adverse effect. This may improve the quality of applications for pesticide use permits. Public confidence in the decisions made may increase if the standards of the Pesticide Control Committee are known and applied consistently.

RECOMMENDATION 1

That the Administrator develop and publish written criteria by which he, in consultation with the Pesticide Control Committee, decides whether a pesticide use will not cause an unreasonable adverse effect.

2. Public Notification of Application

There is no requirement for public notification of a pesticide use permit application under the Pesticide Control Act. The public has no opportunity to know that a pesticide use permit is being considered and is not entitled to be notified until a permit is granted. This means that when pesticide use permit applications are being evaluated, often the only information presented is that of the applicant.

This is in direct contrast to the other two provincial environmental Acts involving land and water use: the Water Act and the Waste Management Act which provide for

public notification at the time that any application is made. These two Acts also provide for an opportunity for interested individuals to make submissions prior to a final decision being made.

Since the assessment of the merits of a pesticide use proposal necessitates some scientific expertise, it is defensible for any permit application to be subject to an expeditious technical evaluation. The strength of the present system is that every pesticide use application is checked by Pesticide Control Committee members with that expertise. The weakness of this system is that there is infrequent independent evaluation of the applicant's site information. The Committee members lack the time, the travel budgets or the staff to make site visits, with the result that some applications are being evaluated without adequate site information. It is neither efficient nor effective to make decisions when some relevant factors have not been considered. These decisions are perceived to be wrong or deficient and are subject to public mistrust and questioning. Notifying the local public of proposed pesticide use applications and providing an opportunity for the public to respond with site specific

information is one method of assuring that local particular conditions are taken into account in evaluating the application. Members of the public may provide useful site specific information that is only available through long term familiarity acquired by living and working in a particular area. The public interest is most broadly served when all the relevant information is assessed - balancing individual circumstances with public policy interests in considering whether or not a pesticide use will cause an unreasonable adverse effect.

RECOMMENDATION 2

A. That the Pesticide Control Program require all applicants to give public notification of the proposed pesticide use program, with no less than 30 days for interested members of the public to respond with site specific information to the applicant.

B. That the Pesticide Control Program require all applicants to provide proof of public notification of the proposed pesticide use program, and a copy of any public response received, at the time of filing a pesticide use permit application.

3. **Full Review**

In order best to consider whether a pesticide use might cause an unreasonable adverse effect, all relevant information must be evaluated by the Pesticide Control Committee, including the Administrator. Discretion is not properly exercised if information which may affect the outcome of the application decision is either missing or fails to be considered.

Standardizing the process is one way to close gaps in relevant information and to reduce the possibilities of arbitrary decisions. For example, since any decision about pesticide use necessarily involves an examination of the need for its use and whether any non-chemical methods that are less risky have been considered, that question should be incorporated into the pesticide use permit application form. Given that the forms contain information that is basic to a proper evaluation of the pesticide use application, the practice must be adopted that forms must be completed in their entirety.

The same principle applies to the granting of permits before all Committee members have had an opportunity to review and comment on the pesticide use application. If the Administrator fails to consider the comments of each

member of the Pesticide Control Committee, he fails to exercise his discretion responsibly.

At present there appears to be no systematized process to provide Committee members with a history of pesticide use for a particular area. The Pesticide Control Program has had a computerized information system since 1984. It is possible for the Administrator to determine the number of pesticide use permits granted for a particular area, or the quantity of regulated pesticide used over a number of years. This information is available for evaluation and may be relevant to the consideration of whether or not a pesticide will cause an unreasonable adverse effect.

RECOMMENDATION 3

That the Administrator develop standard practices, in consultation with the Pesticide Control Committee, that ensure that all relevant information will be available and evaluated by every member before pesticide use permit decisions are made. Such information should include the need for pesticide use, alternative methods of pest control and whether there has been persistent pesticide use for a particular area.

4. Public Notification of Permit

The public has a right to be notified of any pesticide use permit that is granted. This serves several purposes. It alerts people that land or water in their local area will be subject to a pesticide. People who may use that land for livestock grazing, berry picking or who may swim, fish or drink the water can choose to alter their use activities once they have been informed. It is reasonable that any time that a pesticide use occurs that the public ought to be informed of the commencement of the project, and if possible, of the duration of the effect of the pesticide.

Notification is also done to allow any person who believes that the Administrator has erred in granting a permit, to file an appeal of that decision to the Environmental Appeal Board. When a statutory right to appeal is granted, fairness dictates that people must be so informed. Since the majority of appeals are filed by members of the public, it would be both fair and effective

to include information about the right of appeal to the Environmental Appeal Board in the same public notification of the decision to grant the permit.

A third purpose of public notification is to enable anyone to check that pesticide use on public land is authorized and is being done in accordance with the conditions of the permit.

The practice of public notification has improved since the Pesticide Control Program's inception in 1977. Notification of pesticide use permits is now generally done by publication in locally published and distributed newspapers, increasing the chances that local individuals will see them. Posting the permit at the closest town hall, post office, or library to the pesticide area, as well as notifying the region's Member of the Legislative Assembly have been suggested as additional methods of effective public notification.

The Administrator generally only requires publication of part of the permit - usually the pesticide name, its quantity and method of application, the purpose of the use, the location and duration of the pesticide program.

The conditions to which the pesticide use is subject are additional safety precautions which form a vital part of the permit. It is important that the public be aware of these conditions.

RECOMMENDATION 4

A. That every public notification of a pesticide use permit should include the conditions to which it is subject.

B. That section 18 of the Pesticide Control Act Regulation be reconsidered to provide that upon issuance of a pesticide use permit, public notification should include the right to appeal the granting of the permit, the time period, cost, method and place to appeal.

C. That in the case of multi-year permits that public notification of the pesticide use permit be undertaken at the beginning of every pesticide use season.

5. Formal Disclosure

There is no standard mechanism for providing the public with information about particular pesticide use permit applications. Individuals attempting to gain access to the Pesticide Control Committee's comments, or to the conditions which attach to specific permits have had "hit

or miss" experiences in obtaining that information. A formal disclosure policy which is standardly applied will prevent arbitrary access. Accountability of administrative decision makers is likely to be reinforced if the permit process is open to the public. Enforcement of the permit system is assisted if knowledgeable citizens can also monitor adherence to permit conditions. Public confidence is enhanced as individuals can see for themselves that all relevant issues have been fully and carefully considered and that conditions have been imposed to ensure that pesticide use can take place without unreasonable adverse effects. Effective decision making in the first instance could avoid appeals, delays, and ineffective pesticide use.

RECOMMENDATION 5

That the Pesticide Control Program develop a formal disclosure policy so that any person can have access to the material upon which the Administrator's decision concerning a pesticide use permit application is based.

3. PESTICIDE USE PERMITS: APPEALS

A. Appeal Process: Environmental Appeal Board

The hearings and decisions of the Environmental Appeal Board have been the subject of continuing complaints to the Ombudsman. The recurring theme is lack of opportunity for meaningful participation. The issue is not whether the public has an opportunity to be heard, as it is at the pesticide use permit application stage. The issue is whether the appellant's evidence is relevant and will affect the Board's decision.

Frustration and confusion over the Board's jurisdiction has produced a number of negative effects. Some appellants who have participated in hearings because of sincere concerns about the safety of pesticide use have found their submissions discounted as being outside the jurisdiction of the Board. This has resulted in disappointment with Board judgments, abusive behaviour toward Board members and sometimes civil disobedience directed against pesticide use permit implementation. The Board is perceived as having prejudged the issues, the

permit holder is believed to have benefited by an illegitimate process and consequently appellants have little faith that government authorities are adequately discharging their function to prevent unreasonable harm from occurring to the environment and to human health. This study recognizes that the issue of whether any pesticides should be used at all requires a political response from the federal and provincial governments and is not an issue that the Environmental Appeal Board can properly respond to.

Currently an appeal process involves the following steps:

1. Once a pesticide use permit has been granted, it must be publicly advertised before it becomes effective. There is a 30-day period following compliance with public notification, when any person can file an appeal against the Administrator's decision to grant the permit. British Columbia is the only province with pesticide use legislation that provides an unrestricted right of appeal to any person. In fact, section 15 of the Pesticide Control Act provides that any person can file an appeal against the action,

decision or order of the Administrator or of any other person under the Act. Section 15(5) of the Act states that an appeal does not act as a stay against the permit being used, unless the Board makes a specific order to do so. Appeal procedures are set out in the Environmental Apeal Board Regulation.

The parties to an appeal are usually the permit holder and one or more appellants who are appealing the Administrator's decision to grant the permit. Although the Administrator has the right to be a party to any pesticide use appeal, he does not generally appear.

When an appeal is filed with the Board, the Chairman writes to the Pesticide Control Program and asks for copies of the pesticide use application, map, comments of the Pesticide Control Committee and the permit. There is no formal mechanism to ensure that the parties to the appeal have equal access to these important background documents and, in fact, the Board does not generally disclose their possession to the parties.

In addition, there is no formal procedure or requirement that the parties to the appeal exchange basic factual information before an appeal begins. This results in some poorly prepared appeals and in time consuming cross-examination being used as a substitute means for obtaining information.

2. Amendments made in April, 1987 to the Environmental Appeal Board Procedure Regulation provide that the Chairman of the Board can now decide whether an appeal will proceed by way of written submissions or an oral hearing. The Regulation is silent about the procedure for written submissions.

Within 60 days of an appeal being filed, the Chairman will determine how an appeal will proceed and assign Board members to decide the appeal. Not all of the 23 Board members are available for pesticide appeals, despite this being the largest part of the Board's work. Some members lack the time to travel, the endurance required for the lengthy hearings, or the confidence in their ability to assimilate the information. Although individual members have

specific expertise in medical, chemical, engineering and legal areas, the Board does not function strictly as a "science court". It does not have any pesticide experts as staff, nor any in-house laboratory or testing facilities at its disposal. Yet, Board members are expected to be capable of assessing scientific and technical opinion evidence presented by expert witnesses, as well as information presented by the public about local conditions and their use of the area.

The Board has an excellent practice of holding hearings close to the intended pesticide use site. This is beneficial for several reasons; it allows the hearings to be open to the public who are most likely to be affected by the Board's decision, it saves the parties some expense by travelling to their community, and it allows the Board to make on-site inspection visits. The Board often sits late into the evening in order to suit the convenience of the parties.

3. Statutory guidance to determine the jurisdiction of the Board is minimal. Section 15(4) of the Pesticide Control Act states that on an appeal the Board may make an order it considers appropriate. Given that the appeal is the first opportunity for a public hearing the Board correctly holds a trial de novo, or a new trial where it is required to make a determination of its own, based on all of the evidence and arguments submitted to it. The Board is not bound by the decision of the Administrator but it acknowledges that the permit application was reviewed by a committee of experts and a permit was granted. It has the jurisdiction to uphold the permit, amend or deny it. The Board commonly commences hearings by stating that the issue it is being asked to decide is whether the Administrator erred in granting the permit. The onus is on the appellant to show why a permit should be varied or rescinded.

4. The decision-making process of the Board is reflected in part in its written judgments. Section 6 of the Environmental Appeal Board Procedure Regulation requires the Board to give written reasons with its decisions. This is a laudable and fundamentally

necessary practice as it assists learning of the criteria that the Board uses to decide whether a pesticide use will not cause an "unreasonable adverse effect". It helps set precedents to be relied on in the future and provides a measure of predictability. It also facilitates judicial review, if necessary.

Most judgments contain three standard paragraphs which serve as a guideline to the criteria that the Board presently uses. To summarize them, the Board considers the following:

(1) It assumes that a federally registered pesticide is generally safe to use by virtue of having been accepted by the Minister of Agriculture for registration.

(2) It inquires whether the proposed use of the pesticide is contrary to the guidelines and restrictions that Agriculture Canada has placed on its label.

(3) It considers evidence of whether the specific site might prevent safe application of the pesticide and whether the permit holder or pesticide applicator will fail to observe the precautionary conditions attached to the permit and to the pesticide.

These criteria have been criticized as unreasonably narrow.

In addition, the Chairman of the Board states that he has instructed Board members to consider whether an adverse effect might be unreasonable by using a formula that considers the toxic strength of the pesticide and the degree of exposure for the environment and humans. The formula uses World Health Organization data that established no observable effect levels for exposure to particular pesticide ingredients. Since the Board does not make public reference to this formula, it is not common knowledge that this influences Board decisions.

5. Once the Board has reached its decision to uphold or dismiss the appeal, there are three available avenues to review the decision; a complaint to the Ombudsman's Office, resulting in an investigation, an action in Supreme Court under the Judicial Review Procedure Act or a Cabinet review held "in the public interest".

B. Issues and Recommendations

When appeals are filed that do come within the Board's jurisdiction, individuals are entitled to expect that the Board will assist the parties to be as prepared as

possible to focus on the issues that the Board can decide; will give serious consideration to the evidence presented at appeals; and, in reaching their decision, will adhere to the high standards of procedural fairness and administrative effectiveness that are expected of quasi-judicial tribunals.

The recommendations that follow are basic to ensuring that these standards are met in the process of evaluating proposed pesticide use permits to ensure protection against unreasonable adverse effects.

6. Informal Mediation

Currently there are no provisions for any interested person to have a discussion on the merits of a particular pesticide use proposal prior to a permit being granted by the Administrator and publicly advertised. The permit holder and the appellants are usually strangers to one another and no discussion to explain and clarify the intention of the pesticide use or the concerns about it takes place before an appeal hearing proceeds. This is

unique to pesticide use appeals. Under the Water Act and the Waste Management Act there is an opportunity for meetings and internal hearings prior to a final decision.

In Appeal 84/08 PES, the Chairman of the Board was approached by the Arrowsmith Ecological Association to provide a Board member to act as a mediator at a pre-appeal meeting between the permit holder C.P.R., and the appellant Association. This meeting was held and had several results: the parties were able to exchange factual information, visit the site together, negotiate and compromise on some areas to exclude from pesticide use and focus on areas where the dispute lay. The Chairman agreed that this process was constructive, saved all parties and the Board time and money and improved the quality of the appeal by narrowing the issues that were being challenged. It is surprising that this opportunity for prehearing consultation has not been taken advantage of more often, but it is not widely known that the Board is willing to engage in this role.

RECOMMENDATION 6

That the Environmental Appeal Board should publicize its prehearing role of informal mediation, by providing a Board member as a mediator who will not subsequently rule on any appeal that may proceed between the parties.

7. Written Submissions

The Board has always had the authority to request the parties to an appeal to file written submissions. Since the 1987 amendment to the Environmental Appeal Board Procedure Regulations, appeals can be decided solely on the basis of written submissions. There is no doubt that written submissions, like prehearing consultations, have a useful function. They can serve as a discovery mechanism to have the parties exchange information, they may be an efficient way of disposing of prehearing motions or challenges and they may also alert the Board to the need to focus the parties on issues within the Board's

jurisdiction. Since there is no statutory guidance about written submissions, there is an obligation on the Board to provide some written criteria about how written submissions will proceed.

RECOMMENDATION 7

That the Environmental Appeal Board develop and publish written criteria outlining the requirements and use of written submissions for pesticide use appeals.

8. Oral Hearings

The Board now has no mandatory duty to determine an appeal by holding an oral hearing. There may be occasions when parties to a pesticide use appeal wish the Board to determine it solely on the basis of written submissions in order to save time or expense. There may also be circumstances where the issues are virtually identical to a recently decided pesticide use appeal. Generally, the Board ought to be cautious about eliminating oral hearings for pesticide use appeals.

Unlike appeals from the Water Act and Waste Management Act, the pesticide use appeal is the first opportunity that the public has to participate fully in affecting a permit decision. While appeals to the Environmental Appeal Board under other legislation often concern private rights, the majority of pesticide use appeals are concerned with public interest.

If written submissions are utilized effectively to inform the parties and identify the issues, the Board can look forward to well-prepared, efficiently presented oral hearings.

The comments of Mr. Justice Oppal in the case of Islands Protection Society v. The Environmental Appeal Board,[6] made prior to the 1987 regulation amendments, about the importance of oral hearings remain valid in serving the interests of the permit holder and the appellant alike:

> "The Lieutenant Governor in Council has deemed the spraying of pesticides to be of such significance that it has given concerned members of the community who are not parties to the action the right to appeal or intervene. The issue of whether the board ought to either set aside or uphold the granting of the permits is of obvious public importance. It would be

fundamentally wrong and against the rules of natural justice to hear and determine matters of such public importance without holding public hearings in which oral evidence and representations can be heard. There are obviously circumstances under which the rules of natural justice would be complied with by the filing of written briefs or submissions. However the environmental issues which have been raised by the petitioners in this application are such that the board must hold oral hearings which are open to the public. The fact that some evidence may be of a technical nature does not detract from the need for citizens to participate in an open forum. The board might well wish to hear cross-examination of expert witnesses and to pose questions which are of public interest."[7]

RECOMMENDATION 8

That the Environmental Appeal Board as a general rule, determine pesticide use appeals by way of oral hearings, open to the public.

9. Disclosure

There is a rule of natural justice which requires quasi-judicial agencies to disclose any material in their possession which will influence their decision. The

justification for this requirement is to enable a party to know and respond to information that the agency has, in order to affect the outcome of the decision. For example, if the members of the Board who are deciding a pesticide use permit appeal, independently obtain the material upon which the Administrator based his decision, the panel must inform the parties and make that information available.

The issue of disclosure is closely allied to official notice. The Board is expected to have accumulated expertise as a result of its specialized function in hearing environmental appeals. It is entitled to acknowledge information which may be publicly known but not introduced as part of the evidence when it makes decisions. For instance the Board is entitled to take official notice of a particular scientific report on 2,4-D which is published and available, while hearing a 2,4-D appeal, even if the report isn't entered as evidence by any of the parties. If it does take official notice of some information, it is bound by rules of natural justice to disclose that fact to the parties and give them a

reasonable opportunity to respond. This is also true of any scientific formula about toxic strength and degree of exposure that the Board may use in its decision making.

RECOMMENDATION 9

A. That the Environmental Appeal Board disclose any material which it has independently obtained to use during an appeal, to the parties.

B. That the Environmental Appeal Board should be entitled to take official notice of public knowledge in its specialized field, providing that the parties to an appeal are given the opportunity to respond to it.

10. Environmental Appeal Board Members

The Environmental Appeal Board fulfills a unique function in the process of regulating pesticide use in British Columbia. It provides a check for any errors or omissions of the Pesticide Control Committee. It should be an opportunity for a full public hearing to ensure that no individual concern has been overlooked in assessing whether a pesticide use will not cause an unreasonable adverse effect.

Real success in attaining these goals is not reached by having clear and consistent policy and practice alone. To be successful any agency must achieve a high degree of credibility. One of the most important factors that contributes to credibility is a perception on the part of the public that those who serve on the agency are well qualified to do so. Although some members of the Board are very appropriate appointments due to their training, their interest and their ability to conduct the appeal hearings, others are not.

RECOMMENDATION 10

That future appointments to the Environmental Appeal Board should take into account the specialized work of this agency, particularly with respect to pesticide use.

11. Written Criteria

The Board has the statutory obligation to exercise its discretion to inquire into whether a pesticide use will cause an unreasonable adverse effect. The criteria that the Board has been using to make that inquiry have been criticized as too restrictive.

The question of whether the Environmental Appeal Board was unreasonably declining to exercise its jurisdiction by restricting the issues that it would hear and make decisions on, was before the Supreme Court of British Columbia in the case of Canadian Earthcare Society v. Environmental Appeal Board.[8] The Court reviewed the Board's inquiry into a pesticide use permit granted to the

Ministry of Forests and Lands. The Board had stated that it didn't have the jurisdiction to hear the appellants' arguments about whether there were alternative methods to pesticide that would achieve the Ministry of Forest's silvicultural goals. Mr. Justice Lander said:

> "The Board erred in holding that the evidence of silvicultural practices and alternative methods was outside its jurisdiction. However the issue of silvicultural practices and alternative methods would only be relevant to determine the reasonableness of any adverse effect. If the Board finds no adverse effect, there would be no need for the Board to hear evidence on silvicultural practices and alternative methods. Should the Board find an adverse effect (i.e. some risk) it must weigh that adverse effect against the intended benefit. Only by making a comparison of risk and benefit can the Board determine if the anticipated risk is reasonable or unreasonable.
>
> Evidence of silviculture practices will be relevant to measure the extent of the anticipated benefit. Evidence of alternative methods will also be relevant to reasonableness. If the same benefits could be achieved by an alternative risk free method then surely the use of the risk method would be considered unreasonable."[9]

If the Board is to respond to the Supreme Court's finding, this would appear to be an ideal time for the Board to publish the criteria on which it will be basing its future decisions.

RECOMMENDATION 11

That the Environmental Appeal Board develop and publish written criteria by which the Board decides whether a pesticide use will not cause an unreasonable adverse effect.

4. RECENT POLICY DEVELOPMENTS

The Ombudsman's Office was pleased to review some recent pesticide use policy developments with the Ministry of Forests and Lands. More pesticide use permits are granted for forestry purposes than any other purpose in British Columbia. Forestry has been increasing its pesticide use every year. Most permits granted are valid for a period of 2 or 3 years. The Ministry of Forests and Lands commenced an internal investigation following an Environmental Appeal Board hearing where the Ministry, as a permit holder, was opposed by a number of citizens groups. Some of the main concerns put forward to the Ministry of Forests and Lands, reflect similar complaints to the Ombudsman:

- the public mistrusts the pesticide registration process of Agriculture Canada because it relies on data produced in private laboratories which are contracted by the chemical companies;
- the main public concern about pesticides is a perceived health problem;
- water users do not want to see a deterioration in the quality of their drinking water due to pesticide contamination;

- some of the public mistrust the ability of Forest Service staff to practice good vegetation management;
- some believe that the costs of alternative vegetation management techniques are not being adequately evaluated;
- members of the public have not been involved sufficiently in decisions that affect them directly.

As a result of their own internal investigation a report was issued with recommendations that have been accepted by the Ministry. The recommendations include:

> "Decisions on vegetation management prescriptions should be based on a detailed analysis of available alternatives. Choices should be based on a combination of technical assessments and public consultations. Since this prescription is determined in part by the methods of harvesting, consultation must occur before logging begins."

The commitment by the Ministry of Forests and Lands to public consultation as part of its long-term vegetation management planning process is important. The Ministry has stated that all people must have equal access to information and equal opportunity for participation in the planning process. This is a good example of a government

authority recognizing that environmental decisions are best when they are made in an informed and responsive manner that takes into account individual concerns as well as broader policy interests. The Ombudsman's Office encourages other pesticide users to follow this example.

5. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

British Columbia currently regulates the use of pesticides on publicly owned land and water. The Pesticide Control Program operates a permit system which is meant to be an expeditious, expert evaluation of pesticide use proposals. It is a centralized process that relies almost solely on the evidence that the applicant submits. This can and does omit site specific information about local conditions that the people who live and work in the area that is subject to the proposal, could supply. That information is not available to the Pesticide Control Committee of experts, as there is no requirement to notify the public of any pesticide use application. Providing the opportunity for people to give information to the Pesticide Control Program that is useful to the experts' evaluation is a method of improving the environmental decisions. Ensuring that the information is relevant can be achieved by publishing the criteria that the Administrator of the Pesticide Control Act uses in deciding whether or not a pesticide use will cause an "unreasonable adverse effect", when he grants or denies a

permit. Making all the material available on which he bases his decision will enable the public to check that the decision making has been fair and accurate.

The Ministry of Forests and Lands, one of the leading regulated pesticide users in the province, has committed itself to public involvement about pesticide use decisions at the local level. Involving the people who will be most affected by the outcome of any decision will guarantee that individual health and safety concerns as well as good environmental management will be taken into account.

The Environmental Appeal Board has been facing an ever-increasing number of appeals based on concerns that decisions about pesticide use have been either wrong or deficient. Confusion about the Board's jurisdiction has caused frustration, cynicism and in some cases, has led to civil disobedience. In a democratic system, the public interest is not served by these responses to government environmental decisions. British Columbia is the only province that has an automatic right, by any person, to appeal against a decision involving the regulated use of pesticides. The Environmental Appeal Board has an

important responsiblity to serve the public interest by ensuring that pesticide use will not cause an unreasonable adverse effect. By informing the public of its jurisdiction, the Board can expect that appeals will be focused on the issues that it can decide. In turn, people who use the Board in its appellate function can reasonably demand that its decisions meet the high standard of fairness expected of quasi-judicial tribunals. By requiring that those responsible for making environmental decisions do so in an informed and fair manner, the public can be best assured that when pesticide use decisions are being made, its requirement for protection against unreasonable adverse effects has been properly taken into account.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

That the Administrator develop and publish written criteria by which he, in consultation with the Pesticide Control Committee, decides whether a pesticide use will not cause an unreasonable adverse effect.

RECOMMENDATION 2

A. That the Pesticide Control Program require all applicants to give public notification of the proposed pesticide use program, with no less than 30 days for interested members of the public to respond with site specific information to the applicant.

B. That the Pesticide Control Program require all applicants to provide proof of public notification of the proposed pesticide use program, and a copy of any public response received, at the time of filing a pesticide use permit application.

RECOMMENDATION 3

That the Administrator develop standard practices, in consultation with the Pesticide Control Committee, that ensure that all relevant information will be available and evaluated by every member before pesticide use permit decisions are made. Such information should include the need for pesticide use, alternative methods of pest control and whether there has been persisitent pesticide use for a particular area.

RECOMMENDATION 4

A. That every public notification of a pesticide use permit should include the conditions to which it is subject.

B. That section 18 of the Pesticide Control Act Regulation be reconsidered to provide that upon issuance of a pesticide use permit, public notification should include the right to appeal the granting of the permit, the time period, cost, method and place to appeal.

C. That in the case of multi-year permits that public notification of the pesticide use permit be undertaken at the beginning of every pesticide use season.

RECOMMENDATION 5

That the Pesticide Control Program develop a formal disclosure policy so that any person can have access to the material upon which the Administrator's decision concerning a pesticide use permit application is based.

RECOMMENDATION 6

That the Environmental Appeal Board should publicize its prehearing role of informal mediation, by providing a Board member as a mediator who will not subsequently rule on any appeal that may proceed between the parties.

RECOMMENDATION 7

That the Environmental Appeal Board develop and publish written criteria outlining the requirements and use of written submissions for pesticide use appeals.

RECOMMENDATION 8

That the Environmental Appeal Board as a general rule, determine pesticide use appeals by way of oral hearings, open to the public.

RECOMMENDATION 9

A. That the Environmental Appeal Board disclose any material which it has independently obtained to use during an appeal, to the parties.

B. That the Environmental Appeal Board should be entitled to take official notice of public knowledge in its specialized field, providing that the parties to an appeal are given the opportunity to respond to it.

RECOMMENDATION 10

That future appointments to the Environmental Appeal Board should take into account the specialized work of this agency, particularly with respect to pesticide use.

RECOMMENDATION 11

That the Environmental Appeal Board develop and publish written criteria by which the Board decides whether or not a pesticide use will cause an unreasonable effect.

APPENDIX 1

ESTIMATED DISTRIBUTION OF ACTIVE PESTICIDE USE PERMITS
(CROWN LAND, WATER) BY PURPOSE FOR 1985-87
AS OF JUNE 30, 1987

PURPOSE	NUMBER OF PERMITS	% OF 2581
Forestry	1718	66.6
Railway R/W	298	11.6
Utility R/W	129	5.0
Biting Fly	109	4.2
Hydro R/W	99	3.8
Noxious Weed Control	64	2.4
Industrial Veg.	46	1.8
Landscape Gardening	47	1.8
Agricultural	43	1.67
Aquatic Weed	4	0.2
Urban Rodent Control	6	0.2

All active permits over 85-87, June 30/87

FOOTNOTES

1. The Honourable H.A. Olson, Federal Minister of Agriculture in debate on amendments to the Pest Control Products Act, House of Commons Debated (14 January 1969) at 4275

2. Mr. Harold Major, President of the Canadian Agricultural Chemical Association Pesticide Use in Urban Environments Conference West Coast Environmental Law Research Foundation, 1983 at 134

3. Pest Control Products Regulations C.R.C. 1978, c 1253 s.18

4. Health and Welfare Canada 'Pesticide Safety Being Reassesed' News Release 1980-49 (23 June 1980) at 1-2

5. Agriculture Canada, Food Production and Inspection Branch Memorandum to Registrants News Release (May 20, 1986) at 2

6. Islands Protection Society v Environmental Appeal Board et al, 8 B.C.L.R. (2d) 30 B.C.S.C. at 36

7. Ibid. at 36

8. Canadian Earthcare Society v Environmental Appeal Board (Unreported) 87/361 Kelowna Registry B.C.S.C. at 6

9. Ibid. Reasons for Judgment at 6

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B.C. Reg. 1/82

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